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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON
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6
7 JUAN P. GRIFFIN,

8 Plaintiff,

9 v.

10 SPOKANE POLICE DEPARTMENT, et al.,
11

12 Defendants.
13

NO. 2:16-CV-00207-JLQ

ORDER DISMISSING COMPLAINT
AS FRIVOLOUS AND BASELESS,
DIRECTING ENTRY OF
JUDGMENT, AND CLOSING FILE

14 On June 8, 2016, Plaintiff submitted his *pro se* Complaint along with an
15 Application to Proceed *In Forma Pauperis*. See (ECF No. 1); (ECF No. 2). Magistrate
16 Judge Rodgers accepted his application and set the matter for screening by this court
17 pursuant to 28 U.S.C. § 1915(e)(2). On July 1, 2016, the court issued an Order to Amend
18 or Voluntarily Dismiss Complaint because the Complaint failed to state a claim as
19 drafted. (ECF No. 6). If Plaintiff chose to amend his Complaint, he was directed to
20 “present his complaint on the form provided by the court as required by Local Rule
21 10.1(i).” (ECF No. 6 at 4). On August 4, 2016, Plaintiff submitted a letter purporting to
22 be in compliance with the court’s Order. (ECF No. 7). Despite the non-compliant form of
23 this letter, the court has construed and screened the letter as an Amended Complaint.

24 In the letter, Plaintiff alleged his civil rights were violated because the Spokane
25 Police Department, between June 22, 2013 to June 1, 2016, “used false [and] misleading
26 words like harrassment [sic] instead of cyberstalking. They failed too [sic] show up when
27 I made calls to the national 911 system, crime check and the 1-800 crisis line.” (ECF No.
28 7 at 1). He asserted “[w]hen words like cyberstalking are being replaced by other words

1 the city is for some reason” violating due process. (ECF No. 7 at 1). He also stated “I was
2 abused while walking down the street for being black and other crimes against
3 humanity.” (ECF No. 7 at 1).

4 Plaintiff also alleged he was “denied my legal rights when I was locked out by a
5 member of the Spokane Housing Authority and on the 18th of Aug of this year, 2016, my
6 eviction still isn’t complete.” (ECF No. 7 at 1). He alleged he lost personal property and
7 was not given an account credit in connection with this eviction. (ECF No. 7 at 1-2). He
8 asserted claims against Chase Bank because they received a credit of \$1,072 but “sent the
9 check back and I was unable to pay my rent.” (ECF No. 7 at 2). Plaintiff brings claims
10 against Tim Pkm Milhorn for cutting off his power, which “forced me to call 911, forced
11 me to call the 1-800 crisis line one [sic] than once and I was taken too [sic] the Spokane
12 VA Hospital emergency room by members of the Spokane Police Department.” (ECF No.
13 7 at 2). Lastly, Plaintiff asserted three individuals were known to the Spokane Police
14 Department as cyberstalkers. (ECF No. 7 at 2). Plaintiff asserted “the most important
15 thing that the court should know is that national security is more important [than] my
16 rights to due process.” (ECF No. 7 at 1).

17 Pursuant to 28 U.S.C. § 1915(a), a district court “may authorize the
18 commencement ... of any suit ... without prepayment of fees... by a person who submits
19 an affidavit that includes a statement of all assets such [person] possesses that the person
20 in unable to pay such fees or give security therefor.” *See also, Andrews v. Cervantes*, 493
21 F.3d 1047, 1051 n.1 (9th Cir. 2007) (citing *Lister v. Department of Treasury*, 408 F.3d
22 1309, 1312 (10th Cir. 2005) stating the statute applies to all persons, not just prisoners).
23 However, “the court shall dismiss the case at any time if the court determines ... the
24 action ... (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be
25 granted; or (iii) seeks monetary relief against a defendant who is immune from such
26 relief.” 28 U.S.C. § 1915(e)(2)(B).

27 A complaint “is frivolous where it lacks an arguable basis either in law or in fact.
28 [The] term ‘frivolous,’ when applied to a complaint, embraces not only the inarguable

1 legal conclusion, but also the fanciful factual allegation.” *Neitzke v. Williams*, 490 U.S.
2 319, 325 (1989), *superseded by statute on other grounds as stated in Lopez v. Smith*, 203
3 F.3d 1122, 1126-27 (9th Cir. 2000). The court may dismiss a claim when it is “based on
4 an indisputably meritless legal theory” or when “factual contentions are clearly baseless.”
5 *Neitzke*, 490 U.S. at 327. The “critical inquiry” is whether any of the claims have “an
6 arguable basis in law and fact.” *Jackson v. State of Ariz.*, 885 F.2d 639, 640 (9th Cir.
7 1989), *superseded by statute on other grounds as stated in Lopez*, 203 F.3d at 1130-31.

8 The facts alleged in a complaint are to be taken as true and must “plausibly give
9 rise to an entitlement of relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Mere legal
10 conclusions “are not entitled to the assumption of truth.” (*Id.*). A complaint must contain
11 more than “a formulaic recitation of the elements of a cause of action.” *Bell Atlantic*
12 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). It must plead “enough facts to state a claim
13 to relief that is plausible on its face.” (*Id.* at 570).

14 A “finding of factual frivolousness is appropriate when the facts alleged rise to the
15 level of the irrational or the wholly incredible, whether or not there are judicially
16 noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33
17 (1992). In considering whether a complaint is frivolous, “the *in forma pauperis* statute,
18 unlike Rule 12(b)(6), ‘accords judges not only the authority to dismiss a claim based on
19 an indisputably meritless legal theory, but also the unusual power to pierce the veil of the
20 complaint’s factual allegations and dismiss those claims whose factual contentions are
21 clearly baseless.” (*Id.*) (quoting *Neitzke*, 490 U.S. at 327).

22 In considering a *pro se* complaint which fails to state a claim as presented, the
23 court should allow leave to amend unless it is “absolutely clear that the deficiencies of the
24 complaint could not be cured by amendment.” *Broughton v. Cutter Laboratories*, 622
25 F.2d 458, 460 (9th Cir. 1980) (per curiam).

26 Under 42 U.S.C. § 1983, a plaintiff must prove: (1) a person acting under color of
27 state law (2) committed an act that deprived the plaintiff of some right, privilege, or
28 immunity protected by the Constitution or laws of the United States. *Leer v. Murphy*, 844

1 F.2d 628, 632-33 (9th Cir. 1988). A person deprives another “of a constitutional right,
2 within the meaning of section 1983, if he does an affirmative act, participates in another’s
3 affirmative acts, or omits to perform an act which he is legally required to do that causes
4 the deprivation of which [the plaintiff complains].” *Johnson v. Duffy*, 588 F.2d 740, 743
5 (9th Cir. 1978).

6 To establish liability pursuant to 42 U.S.C. § 1983, the plaintiff must set forth facts
7 demonstrating how each defendant caused or personally participated in causing a
8 deprivation of the plaintiff’s protected rights. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.
9 1989); *Arnold v. International Business Machines Corp.*, 637 F.2d 1350, 1355 (9th Cir.
10 1981). Even a liberal interpretation of a civil rights complaint may not supply essential
11 elements of a claim the plaintiff failed to plead. *Ivey v. Board of Regents of University of*
12 *Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

13 Plaintiff’s factual allegations are baseless and frivolous. Plaintiff’s allegations
14 concerning his alleged eviction are not a matter of this court’s concern. The allegations
15 regarding the use of “harassment” instead of “cyberstalking” are patently meritless. His
16 other cyberstalking allegations are wholly frivolous. Plaintiff’s conclusory statements do
17 not constitute proper allegations and are baseless legal conclusions. The court finds the
18 Complaint frivolous and no amendment would cure the baseless claims contained therein.

19 The court also observes Plaintiff has eight other cases pending which contain
20 similar allegations of a sparse, conclusory, and fanciful nature. It appears Plaintiff deems
21 it appropriate to file a new lawsuit whenever he is unhappy or dissatisfied with another
22 person’s actions. This defies the purpose of civil lawsuits and takes up the court’s time
23 addressing frivolous claims. Plaintiff is warned a litigant who burdens the court with
24 repetitive and frivolous litigation runs the risk of being declared a vexatious litigant. *See*
25 *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007). This court is
26 considering initiating such a process in light of Plaintiff’s conduct and allegations in all
27 of the pending cases, including the instant matter.

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IT IS HEREBY ORDERED:

1. The construed Amended Complaint (ECF No. 7) and the claims therein are **DISMISSED WITH PREJUDICE** based on the court's finding the claims and factual allegations contained therein are frivolous and baseless.
2. The Clerk is directed to enter judgment of dismissal of the construed Amended Complaint (ECF No. 7) and the claims therein **WITH PREJUDICE** and without costs or attorneys' fees awarded to any party.

IT IS SO ORDERED. The Clerk is directed to enter this Order and Judgment, furnish copies to Mr. Griffin, and close this file.

Dated October 14, 2016.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE